Summary of Restrictions on Retired Personnel Shows Curbs on Employment

Aided by Army public information officials and experts of the Judge Advocate General's Corps of the Army, The JOURNAL has succeeded in compiling a summary of restrictions regarding the empolyment activities of retired personnel.

It is emphasized that the information published herewith in no sense represents a full and complete treatment of this complex subject. However, some of the more major items of pertinent interest are presented and are cretain to be of value to the thousands of retired military personnel not in direct touch with current regulations or pending legislation.

Employment By The Government

Of particularly contemporary interest is the legislation now before Congress (S. 352) which would simplify and consolidate existing law pertaining to the receipt of compensation from dual employment by the United States. This measure failed of enactment during the last Congress only because it became lost in the last minute shuffle for adjournment but it is likely to pass in the near future.

If enacted as introduced in the present Congress, the bill would remove the prohibitions imposed by the act of 31 July 1894 (5 U.S.C. 62) on the acceptance, or the holding, of Federal offices or positions by retired officers of the Regular Army.

The 1894 act provides that a person who holds an office under the Federal Government (retired officers of the Regular Army), the salary or compensation of which amounts to $2500, may not be appointed to any other office under the Federal Government to which compensation is attached.

Specifically excepted by that act from its restrictions are retired enlisted men and officers who are retired for injuries received in combat with an enemy or for injury or incapacity incurred in line of duty, and retired officers of the Regular Army who may be elected to public office under the United States or appointed to office by the President with the advice and consent of the Senate.

In that connection, the Comptroller General has held that the 1894 dual office act does not apply to enlisted men advanced to commissioned grade on the retired list; to non-Regular officers of the Army who are in receipt of retirement pay; or to temporary employment or service as a consultant on a fee basis as distinguished from a time basis. There are in addition several specific exceptions to the restrictions of this statute, for example: the Federal Civil Defense Administration is authorized to employ not to exceed 25 retired officers, warrant officers, and enlisted men without regard to that act (sec. 401 of the Federal Civil Defense Act of 1950 (Pub. Law 920, 81st Cong.).

But aside from the dual office provision discussed above, there is in effect the highly restrictive provision (sec. 212 of the Economy Act of 30 June 1932 (5 U.S.C. 59a)) which limits dual compensation from the Federal Government to $3000 annually.

This $3000 limitation is applicable to all officers or former officers (Regular or non-Regular) receiving retired or retirement pay for or on account of service as a commissioned officer. It is also applicable to retired enlisted men and warrant officers advanced on the retired lists to commissioner grade if their retired pay is based on commissioned service. Specifically excepted from the $3000 limitation on the receipt of dual compensation are the following:

(1) Regular or non-Regular commissioned officers in receipt of retired or retirement pay for physical disability incurred in combat with an enemy or from an explosion of an instrumentality of war in line of duty.

(2) Warrant officers and enlisted personnel not drawing retired or retirement pay for or on account of service as a commissioned officer.

The Comptroller General has held that the restrictions of the Economy Act do not apply to temporary service as a consultant or advisor with pay on a fee basis as distinguished from a time basis. Further, there are certain statutory exceptions with regard to individual offices or employments under the United States.

The enactment of S. 352 as introduced would raise the limitation on the receipt of dual compensation from the Federal Government from $3000 to $5000 per year.

Thus, while the new bill would repeal the prohibition upon the holding of dual offices under the United States, the limitations on the amount of dual compensation which may be received will remain, although increased from $3000 to $5000.

Editorially, The JOURNAL has stated that while S. 352 is a step forward it still will bar the Government from maximum utilization of retired personnel of the Armed Forces, seen as especially important during the current emergency.

In this regard, it should be noted that S. 352 does, however, give to the President the authority to suspend the proposed $5000 dual compensation limitation during any period of national emergency, when, in his opinion, the public interest would be served by making officers and employees subject to this restriction available for additional service.

Although possibly the most controversial restrictions on the activities of retired personnel are the dual office or employment (1894 act) and dual compensation (Economy Act) limitations on employment under the Federal Government are not the only handicaps to retired members and former members of the Armed Forces.

Employment By Private Concerns

There are a number of criminal statutes and other provisions of law which are designed to prohibit officers and former officers of the Government from engaging in private activities incompatible with their position or former position. Whether or not a particular employment would circumvent one or more of the statutes must be examined in any instance in the light of all the circumstances involved. Further, it should be observed that as these statutes are penal in nature, only the Department of Justice and the Federal courts may render an authoritative construction thereof.

A retired Regular officer is precluded from receiving, either directly or indirectly, anything of value from another for giving, procuring or aiding in the procurement of a contract with the Government (18 U.S.C. 216), or for any service rendered another in connection with the sale of anything to the Government through the department in which he holds a retired status (18 U.S.C. 281).

The Attorney General has stated that the law does not prohibit an officer from carrying on a private business activity for compensation, at least when the private activity is unrelated to any business of the Government. Thus, for example, a retired Regular officer might hold a position as an engineer, personnel manager, etc., in a firm engaged in dealing with the department in which he holds a retired status, so long as he does not personally engage in such dealings or his duties for the private concern would not cause him in any manner to enter into engagements in which he has or can have a conflicting personal interest. A retired officer could not act as a sales representative of a private concern in which his duties require him to negotiate contracts with the Government or in connection with the sale of anything to the department in which he holds a retired status—a situation which has been widely criticized.

In addition to the foregoing, a criminal penalty may be imposed upon a retired Regular officer or any person who has been an officer of the United States in the past ten years, who solicits, accepts, or offers for acceptance any commission, payment or gift in connection with the procurement of equipment, materials or services under the Mutual Defense Assistance Act of 1949, effective 6 Oct. 1949 (22 U.S.C. 1584).

Other provisions of law subject retired officers of the Armed Forces not on active duty to a criminal penalty if within two years after retirement they prosecute a claim against the Government involving the department in which they hold a retired status or which was pending in any department while they were on active duty or at any time if the case involves any matter with which they were directly connected while on active duty (18 U.S.C. 283, 284; 5 U.S.C. 99).

An exception is provided in 38 U.S.C. 101 for retired officers and enlisted men to represent recognized veterans' organizations in the presentation of claims under statutes administered by the Veterans' Administration.

It is further observed that members of the Organized Reserve Corps, the National Guard, including the National Guard of the District of Columbia, in receipt of retirement pay, while not on active duty, are not deemed to be retired officers of the Armed Forces.

As stated at the outset of this article, there are numerous other provisions of law and regulations affecting the activities of retired members and former members of the Armed Forces. Consequently, when there is doubt as to what activity the law does or does not permit, retired personnel should seek advice from proper officials, notably those in the Judge Advocate General's Office of their respective services.

—o—

Waiving Retirement Pay

The Comptroller General has rendered comprehensive decision B-97888 regarding waiving retirement pay in favor of a pension, in the cases of nonregular members and former members of the Army and Air Force retired or granted retirement pay because of physical disability. The official digest of the decision follows:

"The Administrator's Decision, Veterans Administration, No. 860, October 5, 1950, holding that nonregular members and former members of the Army and Air Force retired or granted retirement pay because of physical disability may waive their retired pay in favor of a pension or other compensation payable under laws administered by the Veterans Administration is conclusive upon the General Accounting Office, and such persons may later waive their pension or other compensation for the purpose of again receiving the retired pay previously waived.

"A retired nonregular officer or enlisted man of the Army or Air Force who accepts civilian employment in the Federal Government with compensation at the rate of $3,000, or more, per annum, thereby being precluded from drawing retired pay, and who during such civilian employment receives a pension or compensation from the Veterans Administration, may, after the termination of his civilian employment, waive receipt of such pension or compensation and again receive retired pay from the Army or Air Force, the right to retired pay not having been terminated but merely suspended during the period of civilian employment.

"A retired nonregular officer or enlisted man of the Army or Air Force who accepts civilian employment in the Federal Government with compensation at a rate less than $3,000 per annum, but whose combined compensation and retired pay exceeds $3,000 per annum, and who waives the reduced amount of retired pay during the period of civilian employment in order to receive a pension or compensation from the Veterans Administration, may, upon termination of his civilian employment, waive receipt of such pension or compensation and again receive retired pay from the Army or Air Force.

"Retired pay of nonregular personnel of the Army and Air Force is not considered a benefit within the contemplation of the act of August 12, 1935, as amended, which prohibits the collection by set-off or otherwise of any amounts found to be due the Government out of any benefits payable pursuant to any law administered by the Veterans Administration, and therefore, as a general rule, retired pay of such personnel would not be subject to administrative set-off without the debtor's consent, except to the extent that the set-off might be accomplished under the provisions of the act of May 26, 1936, as amended by the act of August 3, 1950."

Approved For Release 2002/05/08 : CIA-RDP57-00384R000500050005-9